Kleindienst Position On Death Penalty Surprises His Staff

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When Attorney General Richard G. Kleindienst announced Thursday that he favors instituting a mandatory death penalty for certain "premeditated, cold-blooded" federal crimes, he surprised a lot of people who work for him at the Justice Department.

In fact, even as Kleindienst was outlining the proposal at a news conference, testimony was being prepared for an assistant attorney general to take quite a different position when he testifies before a Senate subcommittee next week.

A draft of the testimony being circulated at the department yesterday has Roger C. Cramton, outgoing chief of the Office of Legal Counsel, opposing a requirement that capital punishment be applied whenever someone is convicted of airplane hijacking.

Skyjacking was one of the crimes—along with kidnaping, assassinating a public official, killing a prison guard and bombing a public building—that Kleindienst said was appropriate for the mandatory death penalty.

The Attorney General predicted that legislation along those lines would be sent to Capitol Hill by the Nixon administration this year and that if passed by Congress, it would be constitutional.

But Cramton is now scheduled to tell the Aviation Subcommittee of the Senate Commerce Committee that this could aggravate, rather than relieve, current law enforcement problems.

Cramton declined yesterday to discuss his testimony before Wednesday's hearing, but Justice Department sources involved in the developing administration policy on the death penalty said that the assistant attorney general would probably make these points about the death penalty in skyjacking cases:

• It might create international problems for the United States, since some nations will refuse to extradite a defendant who faces certain execution if convicted.

• Some skyjackers might take more lives, or even blow up an aircraft, if they knew they faced the death penalty and were on the verge of being apprehended.

• In some instances there would be no less serious crimes with a skyjacker could be charged, so that a jury would be faced with the narrow choice of condemning him to death or setting him free.

John W. Hushen, chief of public information for the Justice Department, insisted that press reports had exaggerated the Attorney General's position.

He said that Kleindienst was only discussing "part of our consideration" of how to react to the Supreme Court's decision last summer that the death penalty, because it is now unevenly applied, is "cruel and unusual punishment" in violation of the Eighth Amendment.

But the consensus in the top echelons of the Justice Department appeared to be that there was still no definite policy on the issue. Some said Kleindienst had been confused about what is currently regarded as the administration's most likely recommendation.

The department's Criminal Division is working on the administration contribution to a congressional revision of the entire federal criminal code.

As now drafted, sources said, the administration version proposes a two-stage trial in any capital case, one stage for guilt and one for punishment. It includes a "mandatory feature" that would require the death penalty in any instance where the jury—in the second stage—finds such "aggravating circumstances" as "the willful disregard of human life."